

Adversary Proceeding Cover Sheet		ADVERSARY PROCEEDING NUMBER (Court Use Only)	
PLAINTIFFS Holly Elizabeth Wilson		DEFENDANTS LVNV Funding, LLC	
ATTORNEYS (FIRM NAME, ADDRESS AND TELEPHONE NO.) Roland S. Carlton, Jr., Esq. CARLTON LEGAL SERVICES, PLC 118 MacTanly Place Staunton, VA 24401 (540) 213-0547			
CAUSE OF ACTION (Write a brief statement of cause of action, including all U. S. Statutes involved) Motion to Void Judgment Lien as Preference, 11 U.S.C. §522(h), 11 U.S.C. §547, 11 U.S.C. §550			
NATURE OF SUIT (Check the one most appropriate box only)			
<div style="display: flex; flex-wrap: wrap;"> <div style="width: 33%;"> <input type="checkbox"/> 424 To object or to revoke a discharge 11 U.S. C. §727 </div> <div style="width: 33%;"> <input type="checkbox"/> 454 To Recover money or Property </div> <div style="width: 33%;"> <input type="checkbox"/> 458 To obtain approval for the sale both the interest of the estate and of a co-owner in property </div> <div style="width: 33%;"> <input type="checkbox"/> 426 To determine the dischargeability of a debt 11 U.S.C. §523 </div> <div style="width: 33%;"> <input type="checkbox"/> 455 To Revoke an order of confirmation of a Chap. 11 or Chapt. 13 Plan </div> <div style="width: 33%;"> <input type="checkbox"/> 459 To determine a claim or cause of action removed to a bankruptcy court </div> <div style="width: 33%;"> <input type="checkbox"/> 434 To obtain an injunction or other equitable relief </div> <div style="width: 33%;"> <input type="checkbox"/> 456 To obtain a declaratory judgment relating to any of foregoing cause of action </div> <div style="width: 33%;"> <input type="checkbox"/> 498 Other (specify) </div> <div style="width: 33%;"> <input checked="" type="checkbox"/> 435 To Determine Validity, Priority or Extent of a Lien or Other Interest in Property </div> <div style="width: 33%;"> <input type="checkbox"/> 457 To subordinate any allowed claim of interest except where such subordination is provided in a plan </div> </div>			
ORIGIN OF PROCEEDINGS (Check one box only) <div style="display: flex; justify-content: space-between; margin-top: 5px;"> <input checked="" type="checkbox"/> 1. Original Proceeding <input type="checkbox"/> 2. Removed Proceeding <input type="checkbox"/> 3. Reinstated or Reopened <input type="checkbox"/> 4 Transferred from Another Bankruptcy Court </div>			<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
DEMAND N/A	NEAREST THOUSAND \$.00	OTHER RELIEF SOUGHT: To void judgment lien as preference	<input type="checkbox"/> JURY DEMAND
BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES			
NAME OF DEBTOR(S) Holly Elizabeth Wilson		BANKRUPTCY CASE NO. 23-50275	
DISTRICT IN WHICH CASE IS PENDING Western District of Virginia		NAME OF JUDGE Honorable Rebecca B Connelly, Judge	
DIVISIONAL OFFICE Harrisonburg, Virginia			
RELATED ADVERSARY PROCEEDING (IF ANY)			
PLAINTIFF	DEFENDANT	ADVERSARY PROCEEDING NO.	
DISTRICT	DIVISIONAL OFFICE	NAME OF JUDGE	
FILING FEE (Check one box only) <input type="checkbox"/> Fee attached <input checked="" type="checkbox"/> Fee Not Required <input type="checkbox"/> Fee is Deferred			
Date 11/30/2023	Print Name Roland S. Carlton, Jr.	Signature of Attorney (Or Plaintiff) /s/ Roland S. Carlton, Jr.	

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
HARRISONBURG DIVISION**

IN RE: Holly Elizabeth Wilson
Debtor(s)

**MOTION TO RECOVER GARNISHED
EMPLOYMENT INCOME AS A
PREFERENCE**

HOLLY ELIZABETH WILSON
Plaintiff/Debtor(s)

Case number: 23-50275

v.
LVNV FUNDING, LLC

Adversary No. _____

Serve: LVNV FUNDING, LLC
c/o Corporation Service Company
100 Shockoe Slip, FL 2
Richmond, VA 23219-4100
Defendant(s)

COMES NOW the Plaintiff/Debtor, Holly Elizabeth Wilson, by counsel, pursuant to 11 U.S.C. §522(h), 11 U.S.C. §547, 11 U.S.C. §550, and Bankruptcy Rule 7001, and respectfully represents unto the Court as follows:

1. That this is a core proceeding and this Court has jurisdiction over this issue pursuant to 28 U.S.C. §157 and 11 U.S.C. §1334.
2. That, pursuant to the U.S. Supreme Court Decision in *Stern v. Marshall*, 131 S.Ct. 2594 (2011), Debtor(s) requests a final decision on the merits of this motion.
3. That Debtor filed a petition for relief under Chapter 13 of Title 11 of the United States Code on June 9, 2023.
4. That a chapter 13 plan has not yet been confirmed.
5. That, on March 24, 2023, your Defendant docketed an abstract of judgment which established a judicial lien against the Debtors residential real estate recorded in the Clerk's Office of the Circuit Court of the City of Staunton, Virginia, in judgment record number 230000223. Said abstract of judgment identified a judgment in the amount of Two Thousand, Three Hundred,

Seven and 16/100 Dollars (\$2,307.16) with additional interest, fees, and attorneys fees, and was entered by the General District Court of the City of Staunton, Virginia on July 23, 2021.

A copy of the recorded judicial lien is attached as Exhibit 1.

6. Therefore, as required by 11 U.S.C. §522(g), the recording of the aforesaid abstract of judgment and establishment of a judicial lien against your Debtors' residential real estate is properly classified as a transfer of property from Debtors to Defendant creditor which was not voluntary by the Debtor.
7. Furthermore, as required by 11 U.S.C. §522(g), the Debtor did not conceal the existence of her residential real estate. The residential real estate is properly listed on the Debtor's Schedule A/B and Schedule C of the Debtor's bankruptcy petition. (See Exhibit 2 and Exhibit 3).
8. As required by 11 U.S.C. §522(h) and Va. Code §34-17, Debtor has already properly exempted the residential real estate by filing Schedule C with the bankruptcy court. Exhibit 3.
9. As required by 11 U.S.C. §522(h), the aforesaid judicial lien could have been avoided by the Trustee pursuant to 11 U.S.C. §547 because:
 - a. the transfer was for the benefit of creditor ; and
 - b. the transfer was for or on an account of an antecedent debt(judgment) owed by the Debtors before the transfer occurred; and
 - c. the transfer was made while the debtor was insolvent (the debtor is presumed insolvent pursuant to 11 U.S.C. §547(f)); and
 - d. the aforesaid recording of the abstract of judgment on March 24, 2023 occurred 84 days before the captioned bankruptcy petition was filed and was therefore within 90 days before the date of the filing of the bankruptcy petition on the date set forth above; and

- e. the transfer enables defendant creditor to receive more than he would have received if
 - i. this case was filed under chapter 7 of the Bankruptcy Code; and
 - ii. the transfer had not been made; and
 - iii. had received payment on this debt to the extent provided by the provisions of bankruptcy law.
- f. Debtor represents to the Court that none of the provisions of 11 U.S.C. §547(c) exist which would have prevented the Trustee to avoid the transfer of the garnished funds.

10. As required by 11 U.S.C. §522(h), the trustee has not attempted to avoid this transfer.

11. Therefore, the Debtors are entitled to avoid the aforesaid judicial lien.

WHEREFORE, Debtor prays that this Court enter an Order, pursuant to 11 U.S.C. §522(h) and 11 U.S.C. §550, which avoids the judicial lien against the Debtors recorded in the Clerk's Office of the Circuit Court of the City of Staunton, Virginia, in judgment record number 230000223 of a judgment in the amount of Two Thousand Three Hundred Seven and 16/100 Dollars (\$2,307.16) with additional interest, fees, and attorneys fees, and was entered by the General District Court of the City of Staunton, Virginia on July 23, 2021; and for such other and further relief as the Court, in equity, deems appropriate.

/s/ Roland S. Carlton, Jr
Counsel

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